IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 742

JAMES MONROE, ET AL.,

Petitioners,

vs.

FRANK PAPE, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

Petitioners' Reply Brief

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UNITED STATES LAW PRINTING CO., CHICAGO 14, ILL. LA Review 5-6751

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Petitioners' Reply Brief

ARGUMENT.

1. Respondents decline to discuss the expressions of "doubt and confusion" by two circuits which are quoted at page 7 of the Petition for Certiorari.

2. Respondents do not discuss, distinguish or even mention *Davis* v. *Turner*, 197 F. 2d 847 and *Jackson* v. *Duke*, 259 F. 2d 3 (Petition for Certiorari, p. 6), the Fifth Circuit decisions which squarely conflict with the decisions below. Respondents do not attempt to explain away the conflict because they cannot. Petitioners' complaint would have been sustained in the Fifth Circuit.

3. Respondents urge that "what facts constitute a Civil Rights Act cause of action can be ascertained without the addition of any further decisions. Courts will always disagree on the facts." (Brief in Opposition, p. 4) This assertion is incomprehensible, since no "facts" are in dispute in this case, and, on almost identical "facts," the Fifth Circuit has decided the same question in the opposite way. If "this disagreement does not constitute a conflict on the basic principle of law" (Brief in Opposition, pp. 4-5), we are at a loss to conceive what does. Petitioners' complaint would have been sustained in the Fifth Circuit.

4. If respondents are correct, and no Federal remedy exists for victims of the "midnight knock on the door" by police officers—and all that is implied by that phrase—then this Court should grant certiorari and say so explicitly and thus end the spate of Federal litigation on this very issue which has continued for over 15 years. (See Petition for Certiorari, Appendix G, pp. 37-43.)

5. Respondents quote with approval (Brief in Opposition, pp. 3-4) *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, as saying of R.S. § 1979 that "Congress gave a right of action sounding in tort to every individual whose federal rights were trespassed upon by an officer acting under pretense of state law." This is correct. It raises the key question in this case: if the complaint at bar does not plead such a "right of action," what complaint ever can?

6. Respondents (Brief in Opposition, pp. 4, 9) and the court below (Petition for Certiorari, Appendix A, p. 16) seem to urge that the availability of a state court remedy somehow bars petitioners from obtaining redress under the Civil Rights Act. This notion is totally unjustified.

As the Ninth Circuit has recognized, to dismiss a Civil Rights Act complaint because of the availability of a state remedy would be to act "from a viewpoint exactly contrary to this obvious purpose of the Civil Rights legislation to give the litigant his choice of a Federal forum rather than that of a state." *Romero* v. *Weakley*, 226 F. 2d 399, 401 (9th Cir. 1956)

Respectfully submitted,

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